

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
SPORT-BLX, INC., *individually and derivatively*
on behalf of its shareholders,

Civil Action No. 1:22-cv-8111

Plaintiff,

**AFFIDAVIT OF MICHAEL
M. SALERNO**

- against -

MICHAEL M. SALERNO, NORTHEAST
PROFESSIONAL PLANNING GROUP, INC.,
CYPRESS HOLDINGS, III, L.P., JOHN AND JANE
DOES 1-4; and XYZ CORPS. 1-4,

Defendants.

-----X

STATE OF NEW JERSEY)
)
 ss.:
COUNTY OF MONMOUTH)

MICHAEL M. SALERNO, being duly sworn, deposes and says:

1. I am the Managing Partner of Cypress Holdings, III, L.P. (“Cypress”), a Defendant in the within action. In this capacity, I am fully familiar with the facts set forth herein.
2. I submit this Affidavit in accordance with the Court’s October 17, 2022 Order wherein the Court ordered that “[b]y October 28, 2022, Defendants shall file a letter attaching one or more affidavits from a person or persons with personal knowledge attesting to the facts required to establish [the] citizenship of each of the general and limited partners of [Cypress].” (ECF No. 14). The Court’s October 17, 2022 Order further provided that “[t]o the extent the partners of Cypress are themselves partnerships, limited liability companies or the like, the affidavit(s) shall also address the citizenship of the partners, members, etc. of Cypress’s partners,

and so on until complete diversity has been established pursuant to 28 U.S.C. §§ 1332, 1441. The affidavits need not identify the names or locations of the persons or entities.” (ECF No. 14).

3. Plaintiff Sport-BLX, Inc. (“Plaintiff” or “Sport-BLX”) filed this action in the Supreme Court of the State of New York, New York County on August 3, 2022 and the action was assigned Index No. 652732/2022 (the “State Court Action”).

4. On September 22, 2022, Defendants filed a Notice of Removal pursuant to 28 U.S.C. § 1441, *et seq.*, and Local Rule 81.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the “Local Rules”), to remove the State Court Action to the United States District Court for the Southern District of New York (“the Notice”) (ECF No. 3).

5. On September 28, 2022, the Hon. Lorna G. Schofield, U.S.D.J. entered an Order in this action stating that “the Notice failed to allege the citizenship of any party at both the time of removal and the time the original action was filed in state court.” (ECF No. 4). The Order further provided “that, by **October 7, 2022**, Defendants shall file an amended notice of removal that sufficiently alleges the requirements of removal jurisdiction on the basis of diversity of citizenship, or a letter stating why the case should not be remanded to state court.” (ECF No. 4).

6. On October 4, 2022, Defendants filed an Amended Notice of Removal that corrected the sole deficiency identified in the Court’s September 28, 2022 Order (ECF No. 6).

7. I am the sole General Partner of Cypress. At the time the State Court Action was filed on August 3, 2022, and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, I was and am a citizen of the state of New Jersey.

8. The [REDACTED] Trust is a limited partner of Cypress and is a traditional trust that was formed in the State of New Jersey. A “traditional trust[’s] citizenship is that of [its] . . . trustee[.]” *Raymond Loubier Irrevocable Trust v. Loubier*, 858 F.3d 719, 732 (2d Cir. 2017) (citing *Americold Realty Trust v. Conagra Foods, Inc.*, 577 U.S. 378, 382-83 (2016)). I serve as Trustee for the [REDACTED] Trust. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, I was and am a citizen of the State of New Jersey.

9. [REDACTED], LLC is a limited partner of Cypress. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED], LLC was and is a limited liability company organized and existing pursuant to the laws of the State of Delaware, with its principal place of business in Shrewsbury, New Jersey. “For diversity purposes, the citizenship of a limited liability company . . . depends upon the citizenship of its members.” *Mackason v. Diamond Fin. LLC*, 347 F.Supp.2d 53, 55 (S.D.N.Y 2004) (citing *Handelsman v. Bedford Village Assoc. Ltd. P'ship*, 213 F.3d 48, 51 (2d Cir. 2000)). [REDACTED], LLC has three members: myself, [REDACTED] and the [REDACTED] Trust, a traditional trust that was formed in the State of New Jersey. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, both I and the other individual member of [REDACTED], LLC were and are citizens of the State of New Jersey. In addition, at the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to

remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, the Trustee of the [REDACTED] Trust was and is a citizen of the State of New Jersey.

10. [REDACTED] is a limited partner of Cypress and an individual who resides in the State of New Jersey. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED] was and is a citizen of the State of New Jersey.

11. Millennium Trust Co., LLC Custodian FBO [REDACTED] 401(k) [REDACTED] is a limited partner of Cypress. [REDACTED], an individual who resides in the State of New Jersey, is the beneficiary of the [REDACTED] 401(k) [REDACTED]. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED] was and is a citizen of the State of New Jersey.

12. [REDACTED] is a limited partner of Cypress and an individual who resides in the State of New Jersey. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED] was and is a citizen of the State of New Jersey.

13. Millennium Trust Co., LLC Custodian FBO [REDACTED] Medical Defined Benefit Plan [REDACTED] is a limited partner of Cypress. [REDACTED] an individual who resides in the State of New Jersey, is the beneficiary of the [REDACTED] Medical Defined Benefit Plan

[REDACTED]. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED] was and is a citizen of the State of New Jersey.

14. [REDACTED] is a limited partner of Cypress and an individual who resides in the State of New Jersey. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED]

[REDACTED] was and is a citizen of the State of New Jersey.

15. Millennium Trust Co., LLC Custodian FBO [REDACTED], IRA [REDACTED] is a limited partner of Cypress. [REDACTED], an individual who resides in the State of New Jersey, is the beneficiary of the [REDACTED], IRA [REDACTED]. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED] was and is a citizen of the State of New Jersey.

16. Next Generation TC FBO [REDACTED] IRA [REDACTED] is a limited partner of Cypress. [REDACTED], an individual who resides in the State of New Jersey, is the beneficiary of the [REDACTED] IRA [REDACTED]. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED] was and is a citizen of the State of New Jersey.

17. [REDACTED], LLC is a limited partner of Cypress. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this

action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED], LLC was and is a limited liability company organized and existing pursuant to the laws of the State of New Jersey, with its principal place of business in Hillsborough, New Jersey. “For diversity purposes, the citizenship of a limited liability company . . . depends upon the citizenship of its members.” *Mackason*, 347 F.Supp.2d at 55 (citing *Handelsman*, 213 F.3d at 51). [REDACTED], LLC has one member who is an individual who resides in the State of New Jersey. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, the sole individual member of [REDACTED], LLC was and is a citizen of the State of New Jersey.

18. [REDACTED], LLC is a limited partner of Cypress. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED], LLC was and is a limited liability company organized and existing pursuant to the laws of the State of New Jersey, with its principal place of business in Eatontown, New Jersey. “For diversity purposes, the citizenship of a limited liability company . . . depends upon the citizenship of its members.” *Mackason*, 347 F.Supp.2d at 55 (citing *Handelsman*, 213 F.3d at 51). [REDACTED], LLC has one member who is an individual who resides in the State of New Jersey. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, the sole individual member of [REDACTED], LLC was and is a citizen of the State of New Jersey.

19. [REDACTED] is a limited partner of Cypress and an individual who resides in the State of New Jersey. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED] was and is a citizen of the State of New Jersey.

20. Next Generation TC FBO [REDACTED] Bene IRA [REDACTED] is a limited partner of Cypress. [REDACTED], an individual who resides in the State of New Jersey, is the beneficiary of the [REDACTED] Bene IRA [REDACTED]. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED] [REDACTED] was and is a citizen of the State of New Jersey.

21. The [REDACTED] Trust is a limited partner of Cypress and is a traditional trust that was formed in the State of New Jersey. A “traditional trust[’s] citizenship is that of [its] . . . trustee[.]” *Loubier*, 858 F.3d at 732 (citing *Americold Realty Trust*, 577 U.S. at 382-83). [REDACTED] serves as Trustee for the [REDACTED] Trust. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED] was and is a citizen of the State of New Jersey.

22. [REDACTED] is a limited partner of Cypress and an individual who resides in the State of New Jersey. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court

for the Southern District of New York on September 22, 2022 to present, [REDACTED] was and is a citizen of the State of New Jersey.

23. The [REDACTED] Trust is a limited partner of Cypress and is a traditional trust that was formed in the State of New Jersey. A “traditional trust[’s] citizenship is that of [its] . . . trustee[.]” *Loubier*, 858 F.3d at 732 (citing *Americold Realty Trust*, 577 U.S. at 382-83).

[REDACTED] serves as Trustee for the [REDACTED] Trust. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED] was and is a citizen of the State of New Jersey.

24. Next Generation TC FBO [REDACTED] FFBO [REDACTED] Trust IRA [REDACTED] is a limited partner of Cypress. [REDACTED], an individual who resides in the State of New Jersey, is a beneficiary of the [REDACTED] FFBO [REDACTED] Trust IRA [REDACTED]. The [REDACTED] [REDACTED], a traditional trust that was formed in the State of New Jersey, is also a beneficiary of the [REDACTED] FFBO [REDACTED] Trust IRA [REDACTED]. [REDACTED] serves as Trustee for the [REDACTED] Trust. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, both [REDACTED] and [REDACTED], the Trustee for the [REDACTED] Trust, were and are citizens of the State of New Jersey,

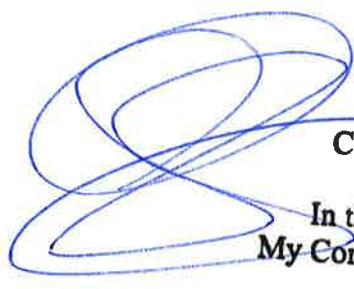
25. [REDACTED], LLC is a limited partner of Cypress. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, [REDACTED], LLC was and is a limited liability company organized and

existing pursuant to the laws of the State of New Jersey, with its principal place of business in Hillsborough, New Jersey. "For diversity purposes, the citizenship of a limited liability company . . . depends upon the citizenship of its members." *Mackason*, 347 F.Supp.2d at 55 (citing *Handelsman*, 213 F.3d at 51). [REDACTED], LLC has two members who are individuals who reside in the State of New Jersey. At the time the State Court Action was filed on August 3, 2022 and from the time that Defendants filed the Notice to remove this action to the United States District Court for the Southern District of New York on September 22, 2022 to present, both individual members of [REDACTED], LLC were and are citizens of the State of New Jersey.

Dated: October 28, 2022


MICHAEL M. SALERNO

Acknowledged before me
this 28th day of October 2022


C. Tiffanie Eagan, Esq.
Attorney-At-Law
In the State of New Jersey
My Commission Does Not Expire